

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAR Case 91-117]

RIN 9000-AG23

Federal Acquisition Regulation; Use
and Charges Clause

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DAR Council) are proposing changes to the coverage "Contractor Use and Rental of Government Property," and the clause "Use and Charges," to clarify the Federal Acquisition Regulation (FAR) coverage pertaining to rental payments for Government-owned real property and equipment. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before July 5, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 91-117 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 91-117.

SUPPLEMENTARY INFORMATION:

A. Background

The CAAC and the DAR Council have agreed on changes to FAR parts 45 and 52 as a result of a proposal from the DOD Inspector General to improve and clarify current language relating to rental payments for Government-owned real property and equipment. The proposed rule improves the current language by distinguishing between

equipment and real property; clarifying that total equipment costs include such factors as rehabilitation and rebuild costs; clarifying the role of the contracting officer; clarifying the use of credits; specifying that rental rates for real property shall be in accordance with commercial rates as stated in FAR 45.403; and providing for payment of interest on late rental payments.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because only a small amount of property is accountable to contracts with small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 91-117), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: May 1, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 45 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

2. Section 45.402 is amended by revising paragraph (a) to read as follows:

45.402 Authorizing use of Government production and research property.

(a) Contracting officers who believe it to be in the Government's interest for a prospective contractor or subcontractor to use existing Government production and research property shall authorize such use in the contract. The

contracting officer shall confirm the availability of the property and coordinate with the administrative contracting officer (ACO) before authorizing its use on either a rental or rent-free basis. The contracting officer shall provide the ACO copies of all correspondence and approvals authorizing contractors' or subcontractors' use of Government production and research property.

* * * * *

3. Section 45.403 is revised to read as follows:

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government real property, plant equipment, special tooling, and special test equipment, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges.

(b) Commercial rates for real property shall be established by using a certified appraisal, if feasible. If such an appraisal is not economically feasible, commercial rates may be established by using Industrial Real Estate Surveys, local rental surveys, or information obtained from the local Chambers of Commerce and local realtors. To calculate rent for real property, commercial rates should be applied against the percentage of commercial sales to total sales or some other equitable basis. The cost of necessary Government-owned support facilities supporting the real property made available on a rental basis should be considered when establishing the commercial rate.

(c) If the agency head or designee determines it to be in the Government's interest, rent for classes of production and research property may be determined on a basis other than the clause at 52.245-9, Use and Charges.

(d) The contracting officer shall determine if the contractor may use Government production and research property on a rental basis and shall determine the length of the rental authorization. The administrative contracting officer shall develop the rental agreement and shall ensure the collection of any rent due the Government from the contractor's use of Government production and research property.

4. Section 45.407 is amended by revising paragraph (a) to read as follows:

45.407 Non-Government use of plant equipment.

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(a) The contracting officers advance written approval shall be required for

any non-Government use of plant equipment. Before authorizing non-Government use exceeding 25 percent, the contracting officer shall obtain approval of the head (or designee) of the agency that awarded the contract to which the property is accountable. The contracting officer shall forward to the administrative contracting officer copies of all approvals for non-Government use of active plant equipment.

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PART 52— SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.245–9 is revised to read as follows:

52.245–9 Use and Charges.

As prescribed in 45.302–6(c), insert the following clause:
Use and Charges (Date)

(a) For purposes of this clause, the types of Government property to be rented are divided into two categories, real property (see 45.101) and equipment. Equipment, as used in this clause, consists of plant equipment, special test equipment, and special tooling.

(b) The Contractor may use the real property and equipment without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge; and

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract specifically authorizes such use in writing.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the real property and equipment to performing contracts and subcontracts of the Contracting Officer having cognizance of the real property and equipment and shall not undertake any work involving the use of the real property and equipment that would interfere with performing existing Government contracts or subcontracts.

(d) If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the real property and equipment for work other than that provided in paragraph (b) of this clause, subject to payment of rental. Authorizing such use of the real property and equipment does not waive any rights of the Government to terminate the Contractor's right to use the real property and equipment.

(e) The rental fee for use of real property and equipment shall be determined in accordance with the following paragraphs:

(1) The basis for computation of the fee shall be established in writing prior to any use of the real property and equipment on a rental basis.

(2) Rental rates for real property and associated fixtures, shall be in accordance

with commercial rates as established under section 45.403 of the Federal Acquisition Regulation.

(3) Rental rates for equipment shall be established in accordance with paragraph (f) and TABLE I of this clause.

(4) Rental for real property and equipment shall be calculated on a per month basis. Rental payments shall be made at intervals of not less than one nor more than six months. The rental agreement shall specify the frequency of the payment.

(f) The full monthly equipment rental charge is the monthly rental rate multiplied by the total acquisition cost of the equipment (as defined in subparagraph (f)(1)). The full equipment rental charge for each month shall be reduced by a credit for rent-free use, if applicable. The credit equals the rental amount that would otherwise be properly allocable to the work for which the equipment was used without charge under paragraph (b) of this clause. The credit shall be computed by multiplying the full rental for the rental period by a fraction in which the numerator is the amount of use of the equipment by the Contractor without charge during the period, and the denominator is the total amount of use of the equipment by the Contractor during the period. If the rent for an item is excluded from the total rent computations because the item was used 100 percent of the time for work without charge under paragraph (b) of this clause, the units of measure for that item shall also be excluded from the credit calculations.

(1) The acquisition cost of the equipment shall be the total cost to the Government, including any substantial improvements at Government expense. The Contracting Officer responsible for the equipment will determine the total acquisition cost, to include rebuild, remanufacture or other rehabilitation costs, and enhancements, as well as, transportation and installation costs, if borne by the Government. It does not include the cost of normal maintenance.

(2) For the purpose of computing any credit under this paragraph, the unit in determining the amount of use of the equipment shall be direct labor hours, sales, hours of use, or other unit of measure that will result in an equitable apportionment of the rental charge, as approved by the cognizant Contracting Officer.

(g) The Contractor shall compute the amount of rentals to be paid on real property and equipment for each rental period. Within 90 days after the close of each rental period, the Contractor shall submit to the Contracting Officer a written statement showing the rental calculations for the real property and equipment and listing the amount of rental due the Government. The Contractor shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(h) Concurrently with the submission of the written statement prescribed by paragraph (g) of this clause, the Contractor shall pay the rental due the Government under this clause. Payment shall be by check made payable to the office designated for contract administration and mailed or

delivered to the Administrative Contracting Officer. Receipt and acceptance by the Government of the Contractor's check pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder, unless the Contractor is notified in writing within 180 days following receipt that the amount received is not regarded by the Government as the final amount due.

(i) If the Contractor fails to submit the written statement and the amount due, as required in paragraphs (g) and (h) of this clause, the Contractor shall be liable for interest charges on the amount due, chargeable for each day the statement and rental payment are late. The interest shall be at the "Renegotiation Board Interest Rate" (published in the **Federal Register** semiannually on or about January 1st and July 1st for the period in which the amount becomes due). Failure to submit timely statements and/or rent payments may result in the Contracting Officer revoking the Contractor's right to use the real property and/or equipment for commercial purposes.

(j) If the Contractor uses any item of the real property and equipment without authorization, the Contractor shall be liable for payment of 50 percent more than the amount of rental that would have been due had prior authorization been obtained.

(k) The acceptance of any rental payment by the Government under this clause shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the real property and/or equipment or any other failure to perform this contract according to its terms.

(1) For equipment of the types covered in Federal Supply Group 34, metal cutting and metal forming machine tools, the following monthly rates shall apply:

TABLE I.—EQUIPMENT RENTAL RATES

Age of equipment	Monthly rental rate
Under 3 years old	3.0 percent.
Over 3 to 8 years old	1.5 percent.
Over 8 years old	1.0 percent.

The age of each item of the equipment shall be based on the year in which it was substantially improved or, if not improved, the year of manufacture, with a birthday on January 1 of each year thereafter. For example, an item of equipment manufactured or improved on July 15, 1992, will be considered to be "over 1 year old" on and after January 1, 1993, and "over 2 years old" on and after January 1, 1994.

(2) Rental of equipment not covered by (1) above will be computed at a rate of 2 percent per month of use.

(End of clause)

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